

**Objection to the Issuance of Section 401 Water Quality Certification for
Mishawaka River Walk
City of Mishawaka
Mishawaka, St. Joseph County, Indiana
2016 OEA 44, (14-W-J-4705)**

OFFICIAL SHORT CITATION NAME: When referring to 2016 OEA 44 cite this case as
City of Mishawaka, 2016 OEA 44.

TOPICS:

dismissal
moot
water quality certification
permit
expiration

PRESIDING LAW JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Sierra Alberts, Esq.
Petitioner: Stanton Walter, pro se
Permittee: Geoff Spiess, Esq.; City of Mishawaka

ORDER ISSUED:

November 9, 2016

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

**Objection to the Issuance of Section 401 Water Quality Certification for
Mishawaka River Walk
City of Mishawaka
Mishawaka, St. Joseph County, Indiana
2016 OEA 44, (14-W-J-4705)**

2. On February 26, 2014, Stanton C. Walter (the “Petitioner”) filed his petition for review with the OEA. The Petitioner lives at 920 North Merrifield Avenue, Mishawaka, directly across from the Project area. He objects to the Approval on the basis that the Project could damage the north bank of the St. Joseph River.
3. Paragraph 2 of the “Conditions of the Section 401 Water Quality Certification”² states as follows:

Complete all approved discharges no later than two (2) years of the date of issuance of this Section 401 Water Quality Certification. You may request a one (1) year extension to the Section 401 Water Quality Certification by submitting a written request ninety (90) days prior to the deadline stated above. The written request shall contain an account of which discharges and mitigation have been completed and list the reasons an extension is requested.
4. The approved discharges have not been completed.
5. The City did not submit a request for a one (1) year extension.
6. IDEM moved to dismiss this cause as moot on September 27, 2016. Neither the City of Mishawaka nor the Petitioner responded to the motion to dismiss or requested an extension of time in which to respond. IDEM filed a reply in support of its motion to dismiss on November 9, 2016.

CONCLUSIONS OF LAW

1. The Indiana Department of Environmental Management (“IDEM”) is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws, per I.C. § 13-13, *et seq.* The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.
2. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.
3. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency’s initial factual determination is not allowed. *Id.*; I.C. § 4-21.5-3-27(d). “*De novo* review” means that, “all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).

² Section 401 Water Quality Certification, dated February 11, 2014, pg. 2.

**Objection to the Issuance of Section 401 Water Quality Certification for
Mishawaka River Walk
City of Mishawaka
Mishawaka, St. Joseph County, Indiana
2016 OEA 44, (14-W-J-4705)**

4. “When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed.” *Travelers Indem. Co. v. P.R. Mallory & Co.*, 772 N.E.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. *Indianapolis Educ. Ass'n v. Indianapolis Pub. Sch.*, 961 N.E.2d 546 (Ind. Ct. App. 2012); citing *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. App. 2000). However, this Court “may decide an arguably moot case on its merits if it involves questions of great public interest.” *Jones v. Womacks*, 852 N.E.2d 1035, 1040 (Ind. Ct. App. 2006) *transfer granted, opinion vacated sub nom. Jones v. Womack*, 869 N.E.2d 459 (Ind. 2007) citing *In Re Lawrence*, 579 N.E.2d 32 (Ind. 1991); *R.A. v. State*, 770 N.E.2d 376 (Ind. App. 1994). “Cases that fit within this exception typically are those containing issues that are likely to recur.” *Id.*
5. The Permit in this cause has expired. Therefore, there is no effective relief that can be rendered to the Petitioner by the OEA.

FINAL ORDER

IT IS THEREFORE ORDERED that IDEM’s Motion to Dismiss as Moot is **GRANTED**. The Petition for Administrative Review filed by Petitioner Stanton C. Walter is hereby dismissed.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 9th day of November, 2016 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge